



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0244]

Hours of Service of Drivers: Transco, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final determination; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the application of Transco, Inc.

(Transco) (USDOT # 1062707) for an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. Transco asked that its drivers be permitted to comply with the 30-minute rest break requirement while performing "on-duty, not-driving" tasks. Due to the nature of its operations, Transco believes that compliance with the 30-minute rest break provision negatively impacts the overall safety and general health of its CMV drivers. FMCSA has analyzed the exemption application and public comments, and has determined that the applicant would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: FMCSA denied the application for exemption by letter dated February 27, 2017, after notice and opportunity for public comment.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-

6477. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency and the reasons for denying an application must be published in the **Federal Register** (49 CFR 381.315(b)).

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying CMVs. The rule included a provision requiring many CMV drivers to take a rest break during the work day. Drivers may drive a CMV only if 8 hours or less have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break if they want to continue driving (49 CFR 395.3(a)(3)(ii)).

III. Request for Exemption

Transco seeks an exemption from the 30-minute rest break provision. Transco, operating through McLane Company, Inc., employs over 4,000 drivers who deliver freight from distribution centers to grocery stores and restaurants throughout the United States. Transco drivers make an average of nine stops per day during which they offload freight to customers. Transco contends that because its operations differ greatly from long-haul operations it should not be subject to the rest break requirement. It contends that the frequent stops serve the purpose of the 30-minute rest break because they break the monotony and stress of driving for Transco's drivers. Transco argues that physically-active offloading is in fact better for the health of its drivers than 30 minutes free of work-related duties. It asserts that the 30-minute break unnecessarily imposes unhealthy sedentary activity on Transco drivers. Finally, Transco believes that the granting of this exemption would reduce the number of motor vehicle accidents and congestion on public roads by reducing the overall miles Transco travels to deliver to its customers. A copy of the Transco's application for exemption is available for review in the docket for this notice.

Public Comments

On September 28, 2016, FMCSA published Transco's application for exemption and requested public comment (81 FR 66734). The Agency received 54 comments to the docket, mostly from CMV drivers. More than 40 of the comments opposed the Transco application for exemption. The principal concern of the CMV drivers was that the exemption would convert obvious on-duty time to off-duty time. The Advocates for Highway and Auto Safety expressed concern that rigorous physical

activity (loading and unloading) would be substituted for the respite from driver duties provided by the 30-minute rest break. The International Brotherhood of Teamsters opposed the application. It pointed out that the applicant described the typical driver workday as being 19 hours long, making the rest break even more critical to safety and driver health.

FMCSA Decision

When FMCSA proposed the provision requiring a 30-minute rest break, it relied upon research indicating that periods free from work responsibilities are followed by improved work performance. The research showed that this improvement was experienced regardless of the precise nature of the worker's duties. FMCSA believes that, whatever the relative degree of monotony associated with long-haul and local-delivery driving, the fact is that both types of drivers are susceptible to fatigue as the workday progresses. The Agency believes that rest breaks provide a benefit to both types of drivers, and that safety is improved by allowing drivers to take a break from their duties during the work day. The rest break is especially important for Transco drivers because they accumulate fatigue both from the lifting of their unloading tasks and from 19-hour days.

For these reasons, FMCSA has denied the applicant's request for exemption.

Issued on: July 11, 2017

Larry W. Minor
Associate Administrator for Policy

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